a substantive right it can not exclude a citizen of another state from asserting such right in the federal courts.

The court in speaking with reference to the third principle used the following language: "Nor can it be said in such a case that relief is obtainable only in the courts of the state. For it may be laid down as a general proposition that, whenever a citizen of a state can go into the courts of a state to defend his property against the illegal acts of its officers, a citizen of another state may invoke the jurisdiction of the Federal courts to maintain a like defense. A state cannot tie up a citizen of another state, having property rights within its territory invaded by unauthorized acts of its own officers, to suits for redress in its own courts. Given a case where a suit can be maintained in the courts of the state to protect property rights, a citizen of another state may invoke the jurisdiction of the Federal courts."

The court cited the following authorities: Reagon *v.* Farmers' Loan & Trust Co., 154 U. S. 362; Cowles *v.* Mercer County, 7 Wall. 118; Railway Co. *v.* Whitton, 13 Wall. 270; Lincoln County *v.* Luning, 133 U. S. 529; Cowley *v.* Northern P. R. Co., 159 U. S. 569; Smythe *v.* Ames, 169 U. S. 466; Singer Sewing Machine Co. *v.* Benedict, 299 U. S. 481; Williams *v.* Crabb, 117 Fed. 193; Union Pac. R. Co. *v.* Board of Com'rs, 222 Fed. 651.

Telegraphs and Telephones—Interstate Commerce—Regulation and Control by Interstate Commerce Commission—Gardner v. Western Union Tel. Co. (C. C. A.), 231 Fed. 405.—By Act Feb. 4, 1887, c. 104, 24 Stat. 379, §§ 1, 6, 15, as amended June 18, 1910 (36 Stat. 539, c. 309 [Comp. St. §§ 8563, 8569, 8583]), and sections 2, 12 (Comp. St. §§ 8564, 8576), which make that act applicable to interstate telegraph business and make interstate telegraph companies common carriers of messages, who are required to publish their rates and regulations subject to control by the Interstate Commerce Commission, Congress occupied the whole field of regulating interstate telegraph business, and therefore Const. Okl. art. 23, § 9, making void any contract stipulating for notice or demand other than such as provided by law, as a condition precedent to liability, does not invalidate a clause in a contract for the sending of a telegram from the point in Oklahoma to a point in Kansas, which provides that the company shall not be liable for damages unless the claim is presented in writing within 60 days after the message is filed with the company for transmission.

The court in the principal case, in considering this live and important question cites the following authorities and uses the following language and reasoning: "Pertinent to this contention, sections 1, 2, 6, 12, and 15 of the act to regulate commerce as amended, are cited. We cannot repeat those sections here, but it appears beyond

question therefrom that, in so far as the provisions of the act to regulate commerce are applicable, it applies to all interstate telegraph business; that as to all interstate business, telegraph, telephone, and cable companies are common carriers within the meaning and purposes of the act; that as to their interstate business telegraph companies must print and publish their rates, rules, classifications, regulations, and practices, and file same with the Interstate Commerce Commission; that they shall establish reasonable rates, rules, regulations, and practices, but messages may be classified into day, night, repeated, unrepeated, and such other classes as are just and reasonable, and different rates may be charged therefor; that all rates, regulations, and practices must be reasonable and just; that penalties are imposed for any attempt to evade the published rates, rules, practices, or regulations; that the Interstate Commerce Commission shall determine what is a just and reasonable regulation or practice; that the rules and regulations established by telegraph companies or other common carriers are deemed reasonable and just until changed by the Interstate Commerce Commission. It results necessarily from the foregoing conclusions that Congress has not only taken possession of the field of interstate commerce by telegraph, but has also specifically prescribed the rules which shall govern the transaction of such commerce.

The Interstate Commerce Commission in W. N. White & Co. *v.* Western Union Telegraph Co., 33 Interst. Com. Com'n R. 500, assumed jurisdiction without question of a case involving the reasonableness of the rates of the Company between New York and San Francisco, and by cable from New York to points in England. Hall, Commissioner, in delivering the opinion of the Commission, said:

"Jurisdiction over these cable rates is clearly conferred upon us by the act to regulate commerce and is admitted of record by counsel for defendant."

The jurisdiction of the Commission was so plain in regard to the service between New York and San Francisco as not to call for any statement whatever. It was further said in the same case:

"It is plain that both classification and charge are to be made in the first instance by the carrier, and it follows by necessary implication that the carrier is to define the classes and formulate such rules and regulations pertaining thereto as shall be just and reasonable. The initiative is with the carrier."

See also Conference Rulings, Bulletin No. 6, regulations Nos. 407, 410, 420, 426, 456, and 460. These rulings show that the Interstate Commerce Commission has assumed specific control of interstate telegraphic business.

The case of Western Union Telegraph Co. *v.* E. A. Bilisoly, 116 Va. 562, 82 S. E. 91, was a suit by the sendee of a message for a statutory penalty on account of the delay in delivery of a night letter. In this case the Supreme Court of Appeals said:

(*At this point the court quotes from the case last cited. The quotation is omitted.*)

This case was followed in Western Union Telegraph Co. *v.* First Natonal Bank of Berryville, 116 Va. 1009, 83 S. E. 424. The following cases also directly support the contention of the Company: Dodge *v.* Adams Express Co., 54 Pa. Super. Ct. 422; Ridge *v.* Erie Railroad Co., 54 Pa. Super. Ct. 602; Strause Iron Co. *v.* Western Union Telegraph Co., —— Pa. Super. Ct. ——; Western Union Telegraph Co. *v.* Compton, 114 Ark. 193, 169 S. W. 946; Western Union Telegraph Co. *v.* Johnson (Ark.), 171 S. W. 859; Western Union Telegraph Co. *v.* Simpson (Ark.), 174 S. W. 232; Western Union Telegraph Co. *v.* Holder (Ark.), 174 S. W. 552.

The case of Western Union Telegraph Company *v.* Brown, 234 U. S. 542, 34 Sup. Ct. 955, 58 L. Ed. 1457, was a suit to recover damages on account of the negligent failure to deliver in the District of Columbia a telegram sent from South Carolina. The addressee of the telegram sued the company in the state court of South Carolina and sought to recover damages for mental anguish suffered by reason of the nondelivery of the telegram. This was made a cause of action by the statute of South Carolina (Civil Code 1902, § 2223). The Supreme Court, after holding that the law of South Carolina could not be invoked for the recovery of damages for a tort committed in the District of Columbia, also said:

"What we have said is enough to dispose of the case. But the act also is objectionable in its aspect of an attempt to regulate commerce among the states. That is, as construed, it attempts to determine the conduct required of the telegraph company in transmitting a message from one state to another or to this District by determining the consequences of not pursuing such conduct, and in that way encounters Western Union Telegraph Co. *v.* Pendleton, 122 U. S. 347 [7 Sup. Ct. 1126, 30 L. Ed. 1187], a decision in no way qualified by Western Union Telegraph Co. *v.* Commercial Milling Co., 218 U. S. 406 [31 Sup. Ct. 59, 54 L. Ed. 1088, 36 L. R. A. (N. S.) 220, 21 Ann. Cas. 815]."

We think also that the Supreme Court of the United States has in the following cases decided the question under consideration in favor of the company: Adams Express Co. *v.* Croninger, 226 U. S. 491, 33 Sup. Ct. 148, 57 L. Ed. 314, 44 L. R. A. (N. S.) 257; Atchison, Topeka & Santa Fe Railway Co. *v.* Robinson, 233 U. S. 173, 34 Sup. Ct. 556, 58 L. Ed. 901; St. Louis, Iron Mountain & Southern Railway Co. *v.* Edwards, 227 U. S. 265, 33 Sup. Ct. 262, 57 L. Ed. 506; Boston & Maine Railway Co. *v.* Hooker, 233 U. S. 97, 34 Sup. Ct. 526, 58 L. Ed. 868, L. R. A. 1915B, 450, Ann. Cas. 1915D, 593; Erie Railroad Co. *v.* New York, 233 U. S. 671, 34 Sup. Ct. 756, 58 L. Ed. 1149, 52 L. R. A. (N. S.) 266, Ann. Cas. 1915D, 138; Southern Railway Co. *v.* Reid, 222 U. S. 424, 32 Sup. Ct. 140, 56 L. Ed. 257.

We have examined the cases cited by plaintiff and find them to

be cases which arose prior to the amendment of the Interstate Commerce Law of June 18, 1910, or they are cases in which state legislation only indirectly burdened interstate commerce. Since the amendment above referred to we find no conflict in the authorities in cases where the facts are similar to the one at bar. Congress has taken possession of the field of interstate commerce by telegraph and it results that the power of the states to legislate with reference thereto has been suspended. The great necessity that commerce between the states should be free from such interference applies in a marked degree to interstate commerce by telegraph. If the regulation which is pleaded in bar in this suit should be held valid in Kansas, and void in Oklahoma, and the illustration may be extended to all the states of the Union, then the power of the United States to regulate commerce between the states in relation to telegraphic business would not only be directly interfered with, but destroyed.

Trusts—Resulting Trusts—Conveyance Taken in the Name of One Person, Consideration Paid by Another.—The plaintiff paid the purchase price for a piece of land but the conveyance was taken in the name of his wife. Held, that the presumption is that there is no resulting trust and the burden is on the husband to establish the contrary intent. Taylor *v.* Delaney, 86 S. E. 831 (Va. 1915).

Where a feoffment was made without consideration the English courts held that a use resulted to the feoffer. Dyer *v.* Dyer, 2 Cox 92 (Eng. 1798). By analogy this doctrine was applied to cases where the conveyance was taken in the name of one who was a stranger to the person paying the consideration. Anonymous Case, 2 Vent. 361 (Eng. 1683). The courts held that the person who supplied the purchase money must be presumed to have supplied it for his own benefit and not that of the stranger. Cox *v.* Cox, 95 Va. 173, 27 S. E. 834 (1897); 1 Perry, Trusts, 4th. ed., s. 126. This is law in Virginia and West Virginia. Bank of U. S. *v.* Carrington, 7 Leigh 567 (Va. 1836); Murry *v.* Sell, 23 W. Va. 475 (1884). The rule has been applied to conveyances of personalty as well as of realty. Briggs *v.* Sandford, 219 Mass. 572, 107 N. E. 436 (1914). The principal case holds, however, that where there is "an obligation, legal or moral," on the part of the person furnishing the consideration to provide for the grantee the contrary presumption arises. In such cases the law presumes that the conveyance was a gift or advancement for the benefit of the grantee. McGinnis *v.* Curry, 13 W. Va. 29 (1878). Thus, where as in the principal case, a conveyance is taken by the husband in the name of the wife the presumption is that there is no resulting trust: Lockhart *v.* Beckley, 10 W. Va. 87 (1877); Deck *v.* Taylor, 41 W. Va. 332 (1895); so, also, where a conveyance is taken in the name of the husband and the consideration is paid from property belonging to the wife: McGinnis *v.* Curry, 13 W. Va. 29 (1878), even